IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

MFA.No. 628 of 2002()

OPMV.549/1995 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KALPETTA
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APPELLANT: PETITIONER

BINEESH, S/O.MANU, PALASSERY HOUSE,
MYLAMPADY POST, MENNANGADI, WAYANAD DISTRICT.

BY ADV. SRI.RONY J.PALLATH

RESPONDENTS:
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1. H.P.DEVAYYA, S/O.PONNAPPA,
HARADOOR VILLAGE, SHUNTIKOPPA,
KARNATAKA STATE

2. N.S.PRADIP, SIVAPRAKASH MOTOR SERVICE,
MANIK ROAD, VIRAJPET, COORG DISTRICT,
KARNATAKA STATE.

3. NATIONAL INSURANCE CO. LTD.,
MANNA BUILDING MAIN ROAD, VIRAJPET,
COORG DIST., KARNATAKA STATE,
INSURER MYZ 6999 BUS,
POLICY NO.6024041/31936301.

BY ADV. SRI.RAJAN P.KALIYATH FOR R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

MFA 628/2002

ORDER IN C.M.P.NO.3633 OF 2002 IN M.F.A. NO.628 OF 2002

DISMISSED

01.02.2007 **Sd/-**
P.R.RAMAN, JUDGE

//TRUE COPY//

P.A. TO JUDGE

P.R.RAMAN, J.

M.F.A NO. 628 OF 2002

Dated this the 1st day of February, 2007

J U D G M E N T

The appellant was a claimant before the Motor Accidents Claim Tribunal, Wayanad in OP(MV) No.549/95. The appellant was the passenger in a bus. The accident occurred on 8/12/94 while the petitioner was travelling in the bus bearing registration No.MYZ 6999. When the bus reached at Shettygery near Srimangala at about 5 P.M, the bus went upside down and thereby the petitioner sustained injuries. It was alleged that the accident occurred due to the negligence of the driver of bus, who is the first respondent. Petitioner was immediately taken to the hospital and admitted and treated there. The 2nd respondent was the owner and the third respondent was the insurer of the bus. The petitioner claimed an amount of Rs. 1 lakh by way of compensation.

2. The Tribunal had analysed the evidence and found that the accident occurred due to the rash and negligent driving of the bus and that there is valid policy of insurance. According to the

appellant, though he asked for an adjournment to produce evidence in the matter, the same was not allowed and the Tribunal has passed the award, which is impugned in this case. The certificate issued by the doctor certifying disability of 5% was rejected by the Tribunal on the sole ground that the doctor was not examined in the case, though no such opportunity was afforded.The appellant would also contend that the compensation awarded on the various heads are low and the fixation of the income at Rs.1,000/- notionally is too low.

3. Learned counsel appearing for the insurance company on the other hand would justify the award passed in this case. However, he submitted that as regards non grant of any compensation towards permanent disability, considering the nature of the injuries sustained, the disability compensation can be fixed by this court itself.

4. Heard both sides.

5. In this case, the petitioner has sustained the following injuries.

"Contusion left side subconjectival injury. Fracture

clavicle joint right. Contusion right chest. Crack fracture of angle of left mandible."

6. The petitioner was in the hospital for 32 days in all in various hospitals. Though the petitioner contended that the monthly income is Rs.1,800/-, the court below fixed it notionally at Rs.1,000/-. The loss of earning for three months was accordingly calculated as Rs.3,000/-. According to me, the notional income even for an unemployed has to be fixed at Rs.1,500/-. Hence the notional income is to be taken as Rs.1,500/-, in which case the appellant will be entitled for an amount of Rs.4,500/-. An amount of Rs.3,000/- is already granted. Appellant will be entitled for Rs.1,500/- more in this head. Towards transportation charges only an amount of Rs.200/- is allowed. According to the petitioner, the accident occurred in Karnataka State and he has to travel by car to reach the hospital and his claim for Rs.1,500/- is therefore reasonable. Considering the aspects of the matter I fix an amount of Rs.800/- to be paid towards compensation for transportation. Over and above the amount awarded, the appellant is thus entitled for an

amount of Rs.600/- more under this head. For extra nourishment, only an amount of Rs.200/- is granted by the court below. Taking into consideration of the total duration of the treatment in the hospital an amount of Rs.800 more is awarded making a total of Rs.1,000/- on the head. Towards pain and suffering an amount of Rs.8,000/- is awarded. Considering the nature of the injuries and the length of treatment underwent by the petitioner, petitioner should have been awarded an amount of Rs.10,000/-. Hence, over and above the amount awarded, appellant will be entitled for an amount of Rs.2,000/- more in this head. The petitioner has produced the medical bills and compensation has been awarded accordingly. No further enhancement is to be granted under this head.

7. Now what remains is regarding the compensation for permanent disability and loss of earning power. The doctor who has examined the patient has given A3 disability certificate. If only an opportunity was given to the appellant, the doctor could have been examined. However, at this instance of time, it is not desirable to remand the matter for that purpose as in a matter of

accident case, an expeditious disposal of the matter is required. There is no serious objection in fixing the compensation accepting A3 disability certificate. Accordingly, the petitioner is aged 19 years, so the multiplier of 16 is adopted and fixing the monthly income at Rs.1,500/-, the petitioner will be entitled to an amount of Rs.14,400/- (16x1500x12x5/100).

8. Thus the appellant will be entitled for an additional compensation of Rs.19,300/- over and above the compensation already fixed by the court below. Thus the additional amount of Rs.19,300/- will stand adjusted as against Rs.25,000/- already deposited, and balance alone will be required to be deposited by the insurance company, the balance amount shall however carry interest as awarded by the court below.

Appeal is partly allowed as above.

P.R.RAMAN, JUDGE

Rp